THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5468 of 2005

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the eighth judgment debtor is directed against the docket order dated 29.08.2002 of the learned II Additional Junior Civil Judge, Warangal in E.P. No.102 of 1994 in O.S. No.783 of 1973.

2. In this Civil Revision Petition, the respondents 1 to 9 are stated to be the decree holders and the respondents 10 to 22 are stated to be the judgment debtors 1 to 7 and 9 to 14, and all the said respondents 1 to 22 are stated to be not necessary parties. In fact, the respondents 1 and 10 had died even by the time of filing of the revision petition. Respondent no.23 is stated to be a third-party purchaser and he is only the contesting respondent in this Civil Revision Petition.

3. I have heard the submissions of the learned counsel for both the sides. I have perused the material record.

4. Now the point for determination is – 'Whether the revision petitioner/eighth judgment debtor has made out valid and sufficient grounds to set aside the docket order, which is impugned?'

5. POINT:

5. (a) From the submissions made by the learned counsel for the revision petitioner/8th Judgment debtor and the material papers produced before this Court, it appears that the decree holders i.e., respondents 1 to 9 herein had obtained a decree in O.S. No.783 of 1973 on the file of the Court of the learned II Additional Junior Civil Judge, Warangal against the respondents 10 to 22. The E.P. No.102 of 1994 was filed by

the decree holders in the said suit for execution of the said decree and for obtaining possession of the decree schedule property, which is said to be a house plot No.3/822 admeasuring 476.28 square meters situated at Kumarpalli, Hanamkonda. Judgment debtors 3, 6 and 8 had filed their counters; but, the judgment debtor no.8 i.e., the revision petitioner had alone contested the matter to some extent and had later remained *ex parte.* The Court of execution by its detailed order dated 28.06.2000 had directed issuance of a warrant directing the delivery of the physical possession of the E.P. schedule plot to the decree holders after removing the judgment debtors or any persons bound by the decree in case of refusal to vacate the same. The Field Assistant of the Court, who was entrusted with the delivery warrant, had reported to the Court that the warrant was executed. Therefore, on 28.09.2002 the Court of execution passed the following order:

> **"Warrant reported executed. Both parties and their counsel and Sri J.Satyanarayana Murthy, Advocate are called absent. No representation. E.P. is closed."**

Aggrieved of the said order, the eighth judgment debtor had preferred this C.R.P.

5. (b) The main grievance of the revision petitioner appears to be that the property that was delivered was not the decree schedule property but some other property and that therefore, there was wrongful delivery of a property, which was not the decree schedule property. On the other hand, the contention of the contesting respondent is that the revision petitioner did not avail the remedy of seeking reopening of the execution petition, which was closed and that he also did not file an independent proceeding seeking an appropriate remedy. In the light of the facts, in case, the eighth judgment debtor/revision petitioner is aggrieved of the orders impugned, he ought to have filed an application to reopen the Execution Petition, which was closed on 28.09.2002 instead of assailing the said order by filing this revision petition. Or in the

alternative, he ought to have followed the procedure established by law and ought to have filed an independent suit for recovery of possession of the property by stating to the effect that he was wrongfully dispossessed from a property, which is not the decree schedule property. However, he did not avail either of the two remedies, on the closure of the EP by orders dated 28.09.2002.

5. (c) What is to be noted is that, after it was reported that the warrant of delivery has been executed, the Court of execution had closed the EP by noting the absence of the parties and their counsel and also noting that there was no representation. No order recording of the delivery and terminating the EP was passed as required under facts and law. Be that as it may, as rightly contended by the learned counsel for the respondent no.23, who is said to be a subsequent purchaser, he was directly impleaded in this revision on the ground that he had purchased the property that was delivered pursuant to the execution of the decree and, therefore, in the said circumstances he has no opportunity to state his case before the Court of Execution. In the circumstances stated by the 3rd party purchaser, who is directly impleaded in this revision petition, no order directing reopening of the execution petition can be passed by this Court at this stage, as such an order is likely to cause prejudice to the rights and contentions of the said party and others concerned. Viewed thus, this Court finds that the C.R.P. is devoid of merit and is liable to be dismissed as the efficacious remedies available to the revision petitioner are not availed by him before approaching this Court.

6. In the result, the Civil Revision Petition is dismissed. It is needless to mention that the revision petitioner/eighth judgment debtor is at liberty to either file a petition for reopening the E.P., which was closed, or a separate independent suit seeking appropriate remedies, if so

advised. In case, a petition comes to be filed for reopening of the EP, which was closed, the Court below shall give an opportunity of hearing to all the concerned and shall dispose of the same on merits and in accordance with the procedure established by law. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.

M. SEETHARAMA MURTI, J

06th November 2014
MVA